

A.

Plaintiff,

) ANSWER, AFFIDAVIT, AND MOTION
) FOR SUMMARY JUDGMENT

B.

v.

) [FORM REQUIRED BY 38-1-11(4)]

Defendant.

) Case No. _____
) Judge _____

SEE REVERSE SIDE FOR INSTRUCTIONS ON COMPLETING THIS FORM

C.

State of _____)

:ss

D.

County of _____)

E.

I, _____, being sworn state that:

F.

() I am the owner of the residence, which has an address of _____, located in the city or county of _____, Utah, which is a single family or duplex residence.

G.

() I entered into a written contract with _____, to build, remodel, or do construction work on the residence.

H.

_____ is a ☐ licensed contractor, ☐ factory built housing retailer, or ☐ a real estate developer.

I.

() The contractor's license number is _____ and the license was active from _____ to _____.

J.

() The attached Certificate of Custodian of Records of the contractor's license is a correct copy.

K.

() The attached contract between the contractor, factory built housing retailer, or real estate developer and myself is a correct copy.

L.

() I have paid the full amount required by the contract and the attached documents prove the contract was paid in full.

M.

() The residence was occupied by the owner or owner's tenant as a primary or secondary residence within 180 days of completion of the construction work.

N.

() _____

O.

I request judgment be entered which includes an order and findings as follows: that I had a written contract with _____; that _____ was licensed or exempt from licensure pursuant to Utah Code Title 58, Chapter 55; that I have paid _____ in full according to the terms of the contract and any modifications; that the residence is an "owner-occupied residence" defined by Utah Code § 38-11-102; that I occupied the residence within 180 days of completion of the work; that the lien on my residence be removed within 10 days of the judgment; and that I be dismissed from this law suit without any liability in accordance with Utah Code § 38-11-107.

() The statements made in this document are true to the best of my knowledge and belief.

() I have also mailed a copy of this document to all of the parties by first class mail postage prepaid.

P.

Dated this _____ day of _____, 20_____.

Q.

Signature of Homeowner _____

Subscribed and sworn to before me by _____ this _____ day of _____, 20_____.

Notary Public

Instructions for completing Answer, Affidavit, and Motion for Summary Judgment Form

You are being sued to collect a mechanics' lien on your property. The law requires that this form be given to you. To claim any protection as a homeowner under the Utah Residence Lien Restriction and Lien Recovery Fund Act, either you, or your attorney if you choose to have one, **MUST DO THE FOLLOWING IMMEDIATELY:** (1) Complete the form as explained below and file this form with the court shown on the caption of the complaint. (2) Send a complete copy to the party that has filed suit against you. (3) mail a complete copy to the other parties in the suit. If you are going to claim any protection under the law, you must file a response within 20 days from the date the Complaint was served on you or as otherwise stated in the summons. Eight days after you mail the form, request in writing the judge to rule on your motion and send copies to all other parties.

Please note, if construction or remodel of your residence is not complete, this form may not apply to your circumstance. You should contact an attorney for assistance in determining your rights under the Act.

Each item on the form is marked with a letter (e.g. the letter "E" next to the line "I ____ being sworn . . ."). The letters below correspond to the letters on the form and explain what information you must place on the blanks lines.

- | <u>Line</u> | <u>Instructions</u> |
|-------------|---|
| A | In the blanks, type or print your name, address phone number, and the court's name as found on the "Complaint." |
| B | In the four blanks, type or print the names of the Plaintiff, Defendants, Case no. and Judge as found on the "Complaint." |
| C | In the blank, type or print the name of state where you live. |
| D | In the blank, type or print the name of county where you live. |
| E | In the blank, type or print the name of the person completing the form; this should be the same person as owns the residence. |
| F | If you own the residence in question, enter an X in the parentheses and type or print the address of the residence, including the city or county, in the blanks. If you do not own the residence, leave this line blank. |
| G | If you had a written contract with a person or company that built, remodeled, repaired, or worked on the residence, enter an X in the parentheses and type or print the contractor's name in the blank. Note: this must be the name of the company not the person with whom you dealt unless the contractor operates exclusively in his/her own name. If you did not have a written contract, leave this line blank. |
| H | Type or print the name of the company, not the person, with which you contracted and check the box corresponding to the kind of business that company operates. If you are unsure what kind of business to choose, select the definition below that matches the kind of work you had done and check the appropriate box. <u>Note: if you mark anything other than contractor you will must provide documentation showing the entity with whom you contracted does, indeed, exactly fit the definition you chose.</u>
contractor means "any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trades."
factory built housing retailer means "a person that sells factory built housing to consumers."
real estate developer means "a person having an ownership interest in real property who contracts for the construction of a residence that is offered for sale to the public." |
| I | Call the Lien Recovery Fund at (801) 530-6104 or toll free in the state of Utah at (866) 275-3675 to request a free Certificate of Custodian of Records—you must specify that you are requesting the certificate to complete this form or you will be charged \$20 for the service. Type or print the contractor's license number and dates of licensure in the blanks. |
| J | If you have the Certificate of Custodian of Records, enter an X in the parentheses and staple the certificate to this form. If you do not have the certificate, leave this line blank. |
| K | If you have a written contract with contractor, factory built housing retailer, or real estate developer, enter an X in the parentheses and staple a copy of the contract to this form. If you do not have a written contract, leave this line blank. |
| L | If you paid the contract in full, enter an X in the parentheses and staple to this form a copy of all documentation proving full payment. If you have not paid the contract in full, leave this line blank. If the contract has not been paid because construction is not complete, you should contact an attorney for assistance with determining your rights under the Act. |
| M | Utah Code Ann. § 38-11-102 defines an "owner-occupied residence" as "a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of construction on the residence." If your residence meets this definition, enter an X in the parentheses; if not, leave this line blank. |
| N | If you intend to raise additional defenses against the complaint type or print them here. Use additional sheets as necessary and enter an X in the parentheses; if not, leave this line blank. |
| O | On the blank lines type or print the name of the individual or business from lines G and H. Enter an X next to the first indented line if the information is on the affidavit is true and correct and enter an X next to the second indented line if you mailed a copy of this form to all parties. |
| P | Type or print the date in the blanks. |
| Q | Sign the form in the presence of a notary public. |

Keep a copy of everything for your records and follow the instructions at the top of this page. Please note the employees of the Lien Recovery Fund are not attorneys. Therefore, they cannot provide a homeowner with legal advice regarding completion of this form or any other defenses against liens. **If you have questions regarding how to interpret the law, what documents to include with this form, what other defenses you may have, etc. please contact an attorney.**